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 CITY AND COUNTY OF SAN FRANCISCO, ET AL.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ESTHER HWANG,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
 FRANCISCO, ET AL.

Defendants.

Case No. C07-02718 MMC

**DEFENDANTS' MOTION TO STRIKE  
 PLAINTIFF'S UNAUTHORIZED SUR-  
 REPLY TO OBJECTIONS TO  
 EVIDENCE; ALTERNATIVELY,  
 DEFENDANTS' REQUEST FOR  
 LEAVE TO FILE RESPONSE TO  
 PLAINTIFF'S UNAUTHORIZED  
 FILING**

Hearing Date: Sept. 12, 2008  
 Time: 9:00 AM  
 Place: No. 7

Trial Date: Oct. 27, 2008

**INTRODUCTION**

On July 25, 2008 defendants filed their motion for partial summary judgment. On August 22, 2008, plaintiff filed her opposition. On August 29, 2008, defendants timely filed their reply, objections to plaintiff's evidence, and an administrative motion requesting leave to file a declaration under seal. Pursuant to local rule 7-3(d) no other papers were to be filed.

1 However, on September 5, 2008, plaintiff filed an unauthorized surreply (misleadingly  
2 entitled titled "opposition") to defendants' objections to evidence. Plaintiff did not seek leave of the  
3 court as required by local rule. Furthermore, plaintiff's "opposition" is a wholesale attempt to argue  
4 the objections and insert other improper arguments in the long frowned upon tradition of an  
5 unauthorized "surreply."

6 Because plaintiff's "opposition" is improper, because it is a misleading attempt to reargue  
7 issues raised in the initial opposition, and because plaintiff failed to seek the court's permission first,  
8 it should be stricken. Alternatively, defendants request leave of the court to file a response to the  
9 filing.  
10

#### 11 ARGUMENT

#### 12 Plaintiff's Second "Opposition" (or Surreply) Was Unauthorized 13 and Therefore Should Be Stricken.

14 The Northern District Civil Local Rules permit the parties to a motion to file *only* an  
15 opposition (by the non-moving party), a reply (by the moving party) and, if applicable, a notice of  
16 recent judicial decisions decided after the opposition or reply were filed. *See* Civil Local Rule 7-3.  
17 "Otherwise, once a reply is filed, ***no additional memoranda, papers or letters may be filed without***  
18 ***prior Court approval.***" (Civ. L.R. 7-3(d) [emphasis added].) The Court has authority to strike any  
19 pleading that is filed without leave of court in violation of its rules.

20 This very Court has discouraged exactly the same tactic used here by plaintiff in the past. In  
21 *Powell v. Fidelity National*, 2003 WL 22134854 (N.D. Cal. 2003)(MMC), plaintiff submitted a  
22 "Request to File Objection and Objection" to defendants' reply brief. Civil Local Rule 7-3(d)  
23 provides that "once a reply is filed, no additional memoranda, papers or letters may be filed without  
24 prior court approval." Civ. L.R. 7-3(d). The Honorable Judge Chesney found plaintiff's "Objection"  
25 to be "unhelpful and unnecessary" (page 3), denied Powell's request that it be filed, and ordered that  
26 the unauthorized pleading be "STRICKEN from the record" (*Id.* at 3)(emphasis in original). The  
27 Court should do the same with respect to plaintiffs' veiled attempt to improperly argue issues.  
28

